

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
GTE Telephone Operating Companies)	CC Docket No. 98-79
GTOC Tariff F.C.C. No. 1)	
GTOC Transmittal No. 1148)	
)	
Pacific Bell Telephone Company)	CC Docket No. 98-103
Pacific Bell Tariff F.C.C. No. 128)	
Pacific Transmittal No. 1986)	

APPLICATION FOR REVIEW

AT&T Corporation hereby requests that the Commission review and reverse the Common Carrier Bureau's Designation Orders in the above-captioned matters.¹ AT&T submits that the Bureau's Designation Orders fail to adequately address the issues raised with respect to these tariffs, and improperly defer to other agencies and forums the determination of the lawfulness of these tariffs. AT&T therefore asks that the Commission review these Designation Orders and require that the Bureau conduct a complete and comprehensive investigation of the issues raised with respect to these filings.² In support thereof, AT&T states the following:

¹ GTE Order Designating Issues for Investigation, DA 98-1667 August 20, 1998 and Pacific Bell Order Designating Issues for Investigation, DA 98-1772, September 2, 1998.

² The Bureau has also released Designation Orders with respect to two additional ADSL tariff filings. See Bell Atlantic Order Designating Issues

The above referenced transmittals propose to offer ADSL services in substantial portions of the United States. ADSL represents an important development in the provision of advanced data services to Americans. Petitions regarding these transmittals were filed by a number of parties, including AT&T's affiliate Teleport Communications Group Inc. ("TCG"). The Bureau suspended the transmittals for one day and established accounting orders. Both Designation Orders limit the proposed investigation to "whether [ADSL service] should be tariffed at the state or federal level ... [and] whether the Commission should defer to the states the tariffing of retail DSL services in order to lessen the possibility of a price squeeze."³ No other issues were identified for investigation in either of the tariff proceedings.

AT&T's subsidiary TCG raised a number of issues regarding non-jurisdictional aspects of the GTE and Pacific tariffs, as did other parties. TCG pointed out that the proposed bundling of DSL service with existing ILEC

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for Investigation, DA 98-1863, September 15, 1998 and BellSouth Order Designating Issues for Investigation, DA 98-1734, September 1, 1998. Neither AT&T nor TCG filed Petitions against the BellSouth and Bell Atlantic tariffs. Like the GTE and Pacific Designation Orders, these Designation Orders fail to address the fundamental lawfulness of these tariffs, and thus suffer from the same infirmities. Accordingly, should the Commission review and reverse the Bureau's treatment of the GTE and Pacific ADSL tariffs, it would be appropriate for the Bureau to issue Supplemental Designation Orders in the case of the BellSouth and Bell Atlantic tariffs.

³ See, e.g., GTE Designation Order at ¶ 12.

frame relay services was improper and would prevent competitors from interconnecting to ADSL customers.⁴ TCG requested that the Commission require the ILECs to make xDSL-capable loops available as unbundled elements to its competitors, including non-discriminatory access to the relevant Operations Support Systems,⁵ on the same terms and conditions as apply when it uses those systems itself to make xDSL services available to its own customers.

Other parties also raised a number of significant issues beyond jurisdiction. For example, with respect to GTE, E*Spire and Intermedia argued that the proposed tariff might improperly allow GTE to circumvent its resale obligations under Section 251(c)(4).⁶ MCI, raising an issue similar to TCG, argued that GTE must tariff the DSL loop and frame relay services separately, relying on the Commission's policies in its collocation order.⁷ Similar concerns were raised by these and other participants with respect to the Pacific transmittal.

⁴ TCG Petition at 2.

⁵ TCG Petition at 5.

⁶ E*Spire Petition at 3-4; Intermedia Petition at 3-4.

⁷ MCI Petition at 5 (*citing Virtual Collocation Order*, 9 FCC Rcd 5154, 5159).

The Bureau, in its GTE Designation Order, stated that the petitioners had raised "significant concerns regarding GTE's DSL offering." Nonetheless, the Bureau decided that it would not address any of those issues. Instead, the Bureau stated that, if GTE fails to meet its statutory obligations in implementing this tariff, parties "may seek mediation pursuant to section 252(a)(2) or arbitration pursuant to section 252(b)" or they "may request that the Commission assess a forfeiture penalty against GTE pursuant to section 1.80 of the Commission's rules."⁸ In its Pacific Designation Order, the Bureau did not discuss these important public interest issues at all.

The difficulty with the Bureau's approach in this instance is that it has permitted these tariffs to take effect, subject to a single days' suspension, and has now apparently passed on any opportunity to assess the lawfulness of the key terms and conditions of that tariff. It is no answer for the Bureau to tell parties to file arbitration or mediation petitions in dozens of states, or to ask that the Commission apply forfeitures against the ILEC, where the issues raised go to the lawfulness of the ILEC's filed FCC tariff. The lawfulness of a tariff filed with the FCC should be determined by the FCC.

⁸ Designation Order at ¶¶ 19-20.

It is well established that this Commission's obligation to pass on the lawfulness of tariffs is central to the statutory regime.⁹ Where, as here, the Bureau has recognized that "significant concerns" have been raised as to whether this tariff is in compliance with the statute, the Bureau has a clear obligation to review those allegations and require corrections to the tariff if the allegations prove correct.¹⁰ That is the basic principle that underlies the statutory framework for the review of tariffs – that where Petitions are timely filed and present material issues the Commission should evaluate those claims within the statutory period for the completion of the investigation. The Commission cannot and should not avoid that responsibility by telling parties to find another forum or another, later proceeding. To do so merely injects unnecessary delay and needless duplication into the tariff review process – but more importantly it leaves parties without remedy in the face of improper tariffs. These dockets are the proceedings that the statute intends be used to review these ADSL tariffs, and it is here that this Commission should evaluate them.¹¹

⁹ " The centerpiece of title II common carrier regulation is the supervision of filed tariffs." Southwestern Bell v. FCC, 19 F.3rd 1475, 1479 (D.C. Cir. 1994).

¹⁰ See, e.g., MCI v. FCC, 57 F.3rd 1136, 1143 (conclusory treatment of intervenor issues may constitute arbitrary and capricious decisionmaking).

¹¹ The five month statutory period for the Commission's review of these two tariffs does not expire until the end of October in the case of GTE,

Accordingly, AT&T requests that the Commission review and reverse the Bureau's Designation Orders, and require that the Bureau conduct a full and complete review of all the issues raised in the Petitions filed against the GTE and Pacific ADSL tariffs.

Respectfully submitted,

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and the end of November in the case of Pacific, and thus there is adequate time for the Bureau to undertake a more detailed review.

CERTIFICATE OF SERVICE

I, Ann Marie Abrahamson, do hereby certify that on this 18th day of September, 1998, I have caused a copy of the foregoing "Application for Review" to be served by U.S. first class mail, postage prepaid, on the parties listed on the attached Service List.

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